

DAVID CHARLES,	:	Order Affirming Decision
Appellant	:	
	:	
v.	:	
	:	Docket No. IBIA 91-56-A
ACTING PORTLAND AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	February 5, 1992

Appellant David Charles seeks review of a January 9, 1991, decision of the Acting Portland Area Director, Bureau of Indian Affairs (Area Director; BIA), denying appellant's application for retroactive general assistance. The Area Director denied the application on the grounds that the application had not been timely filed. ^{1/}

Appellant does not dispute that his application was due at the agency on or before June 27, 1990, or that BIA received the application on July 18, 1990. Instead, appellant has consistently stated that he mailed an application on April 13, 1990, and that it was returned to him on or about July 16, 1990, by a neighbor who indicated he found the opened envelope in a field. Appellant contends that he remailed the application on or about July 17, 1990, after discussing the matter with agency personnel.

Appellant was given a hearing at the agency on August 20, 1990, at which he stated, inter alia, that there is a problem on the reservation with children taking mail from mailboxes. After considering the testimony and evidence, the hearing officer determined that appellant's application could not be accepted because it was not timely received. Appellant appealed this decision to the Area Director, who, on January 9, 1991, affirmed the agency decision, stating:

The application the agency received did not show any evidence of it being out in an open field for over three months, as might be expected in a region which receives a substantial amount of rainfall. In addition, the certification of Indian Blood was not issued until July 17, 1990, clearly past the deadline date of June 27, 1990, for the receipt of applications.

(Jan. 9, 1991, decision at 2).

^{1/} The Area Director indicated his belief that appellant's notice of appeal to him was also not timely filed. However, because he lacked documentary proof of when appellant received the decision from the Olympic Peninsula Agency (agency) Superintendent, the Area Director addressed the merits of the case. For the same reason, the Board reaches the merits of this appeal.

Appellant's notice of appeal repeats the arguments made to both the hearing officer and the Area Director. In addition, appellant contends that the Certificate of Degree of Indian Blood was missing from the opened envelope and had to be replaced. He states that the Area Director would have discovered that the certificate had been replaced if he had inquired into the matter. Appellant also suggests that the Area Director is not an expert on determining how long the original envelope and application had been lying on the ground.

Appellant bears the burden of proving that the original agency decision was erroneous or not supported by substantial evidence. See, e.g., Anderson v. Acting Portland Area Director, 21 IBIA 162 (1992); Ames v. Acting Billings Area Director, 20 IBIA 246 (1991). Here, therefore, appellant bears the burden of proving that his late filing should be excused.

Appellant has stated that he placed an application in his mailbox on April 13, 1990, but that the application was returned to him damaged on or about July 16, 1990. It is evident from appellant's statements that no postmark could have been placed on this application.

The law presumes regularity in postal service. Appellant challenges this presumption, not on the grounds that the Postal Service did not properly perform its function, but rather on the grounds that a third party intervened between his placing the mail in the mailbox and the Postal Service's actual receipt of that mail. The Board takes official notice of the possibility of such an occurrence in any rural area where mail is placed in an individual's mailbox for later Postal Service pickup, rather than being deposited directly into a tamper-resistant Postal Service receptacle.

Appellant apparently did not retain the original envelope. Thus, no one was able to observe the condition of that envelope. Because the envelope was not available, the Area Director was justified in examining the condition of the application, which appellant has not disputed was the same application as he alleges he placed in the mailbox on April 13, 1990. However, because the administrative record sent to the Board contains only a copy of appellant's application, the Board has not had an opportunity to examine the condition of the original document. The Board notes, however, that the application is dated April 12, 1990, in three places, and the copy does not show evidence that it was damaged in any way.

The record contains an unsworn statement, dated August 27, 1990, from Nicolas C. Qualls, stating that he discovered and returned opened and damaged mail to appellant on or about July 16, 1990. Qualls did not indicate to whom the mail was addressed. Furthermore, he did not appear and testify at appellant's hearing at the agency.

Appellant's Certificate of Degree of Indian Blood, submitted with the application which BIA received on July 18, 1990, was dated July 17, 1990. Appellant bore the responsibility of showing why this date should not be considered against him. Although appellant now alleges that the date can

be explained, he made no attempt to explain it at the agency hearing. Appellant should have put forth all of his explanations at that time. BIA was not responsible for investigating and/or proving appellant's case for him.

The Board finds that appellant failed to show that the late filing of his application for retroactive general assistance should be excused.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the January 9, 1991, decision of the Acting Portland Area Director is affirmed.

Kathryn A. Lynn
Chief Administrative Judge

Anita Vogt
Administrative Judge